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May 4, 2006

MEMORANDUM

TO: Legislative Education Study Committee

FR: Frances R. Maestas

RE: STAFF BRIEF: CLASS LOAD REPORTS

The *School Personnel Act* (act) requires school districts to report to the Public Education Department (PED) the size and composition of its 40th day and December 1 classes and authorizes the Secretary of Public Education to disapprove a school district's budget for failure to meet class load requirements within two years.

By November 30 of each year, the act also requires PED to report to the Legislative Education Study Committee (LESC) each school district's ability to meet class load requirements prescribed in law.

Issues:

- During the 2005 interim, the LESC received from PED a written report, *40th Day Class Overloads Report 2005-2006*, which summarized teacher and class overloads reported by districts and by schools within the districts and enumerated the schools and districts that had received waivers to exceed the statutory limits.
- At the conclusion of the meeting, the committee requested that PED provide the 80th day class overload data for school year 2005-2006 and provide additional information on the waiver process, including the criteria used to determine waivers, who grants the waivers, and when the waivers are issued.

Background:

Class Load Requirements

While there are exceptions for students receiving special education services, band and music classes, and athletic electives, the *School Personnel Act* (see Attachment 1) establishes limits on the size of individual classes and the average class load or daily teaching load of teachers in grades K through 12 as follows:

- 20 students per kindergarten teacher; provided that a class load of 15 to 20 students entitles the teacher to the assistance of an educational assistant;
- 22 students per teacher, when averaged among grades 1, 2 and 3; provided that any teacher in grade 1 with a class load of 21 or more shall be entitled to the full-time assistance of an educational assistant;
- an average of 24 students per teacher in grades 4 through 6;
- a daily teaching load of 160 students per teacher in grades 7-12; and
- for teachers of required English courses:
 - a maximum of 27 students per class and a daily teaching load of 135 student per teacher in grades 7 and 8; and
 - a maximum of 30 students per class and a daily teaching load of 150 students per teacher in grades 9-12.

Waiver of Class Load Requirements

Among its other provisions, the *School Personnel Act* allows the Secretary of Public Education to waive individual school class load requirements for not more than two consecutive years if a school district demonstrates that:

- no portable classrooms are available;
- no other available sources of funding exist to meet its need for additional classrooms;
- the school district is planning alternatives to increase building capacity for implementation within one year; and
- the parents of all children affected by the waiver have been notified in writing:
 - of the statutory class load requirements;
 - that the school district has made a decision to deviate from these class load requirements; and
 - of the school district's plan to achieve compliance with the class load requirements.

The secretary may also waive the individual class load and teaching load requirements upon a demonstration of a viable alternative curricular plan and a finding that the plan is in the best interest of the school district and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff.

However, the act requires that if a waiver is granted, the average class load for elementary school teachers at that school is not to exceed 20 students in grade 1 and not to exceed 25 students when averaged among grades 2 through 6.

Finally, charter schools are exempted from this provision because the *1999 Charter Schools Act* (see Attachment 2) waives the requirements for individual class loads and teaching loads for charter schools.

Presenter:

For this presentation, Dr. William O. Blair, General Manager, Assessment and Accountability Division, PED, will outline the PED report on the 80th Day class overload data for school year 2005-2006, describe the class overload requirements and the waiver process in PED rule, and discuss data collection initiatives being implemented at PED that should allow PED staff to assess class overloads with greater accuracy.

Questions the committee may wish to consider:

1. How many waiver requests have been denied for school year 2005-2006?
2. To what extent are there patterns over time of the same public school districts applying for waivers?
3. Have any school districts been denied approval of their budget by the Secretary of Education as a result of failure to meet class load requirements within two years?
4. How often do parents request that their children be transferred (to a different class or another school) once informed in writing, as required by law, of a class overload waiver request? To what extent are the requests for transfer granted?

22-10A-18

PUBLIC SCHOOLS

22-10A-20

~~22-10A-18. School principals; duties.~~

~~In addition to other duties prescribed by law, a school principal shall:~~

- ~~A. under the general supervision of the local superintendent, assume administrative responsibility and overall instructional leadership for the public school to which he is assigned, including the discipline of students and the planning, operation, supervision and evaluation of the educational program of the school;~~
- ~~B. recommend to the local superintendent the employment, promotion, transfer, discharge and termination of school employees in his school;~~
- ~~C. evaluate the performance of school employees and develop professional development plans or job improvement plans to assist school employees to improve;~~
- ~~D. take disciplinary action against school employees;~~
- ~~E. develop a proposed budget for the public school, with input from the school council, and submit it to the local superintendent; and~~
- ~~F. perform other duties assigned to him by the local superintendent to implement the policies of the local school board.~~

~~History: 1978 Comp., § 22-10A-18, enacted by Laws 2003, ch. 153, § 49.~~

~~makes the act effective immediately. Approved April 4, 2003.~~

~~Emergency clauses. — Laws 2003, ch. 153, § 74~~

~~22-10A-19. Teachers and school principals; accountability; evaluations; professional development; peer intervention; mentoring.~~

~~A. The state board shall adopt criteria and minimum highly objective uniform statewide standards of evaluation for the annual performance evaluation of licensed school employees. The local superintendent shall adopt policies, guidelines and procedures for the performance evaluation process. Evaluation by other school employees shall be one component of the evaluation tool for school administrators.~~

~~B. As part of the highly objective uniform statewide standard of evaluation for teachers, the school principal shall observe each teacher's classroom practice to determine the teacher's ability to demonstrate state-adopted competencies.~~

~~C. At the beginning of each school year, teachers and school principals shall devise professional development plans for the coming year, and performance evaluations shall be based in part on how well the professional development plan was carried out.~~

~~D. If a level two or three-A teacher's performance evaluation indicates less than satisfactory performance and competency, the school principal may require the teacher to undergo peer intervention, including mentoring, for a period the school principal deems necessary. If the teacher is unable to demonstrate satisfactory performance and competency by the end of the period, the peer interveners may recommend termination of the teacher.~~

~~E. At least every two years, school principals shall attend a training program approved by the department to improve their evaluation, administrative and instructional leadership skills.~~

~~History: 1978 Comp., § 22-10A-19, enacted by Laws 2003, ch. 153, § 50.~~

~~makes the act effective immediately. Approved April 4, 2003.~~

~~Emergency clauses. — Laws 2003, ch. 153, § 74~~

~~22-10A-20. Staffing patterns; class load; teaching load. (Contingent repeal effective July 1, 2004.)~~

~~A. The individual class load for elementary school teachers shall not exceed twenty students for kindergarten; provided that any teacher in kindergarten with a class load of fifteen to twenty students shall be entitled to the assistance of an educational assistant.~~

B. The average class load for elementary school teachers at an individual school shall not exceed twenty-two students when averaged among grades one, two and three; provided that any teacher in grade one with a class load of twenty-one or more shall be entitled to the full-time assistance of an educational assistant.

C. The average class load for an elementary school teacher at an individual school shall not exceed twenty-four students when averaged among grades four, five and six.

D. The daily teaching load per teacher for grades seven through twelve shall not exceed one hundred sixty students, except the daily teaching load for teachers of required English courses in grades seven and eight shall not exceed one hundred thirty-five with a maximum of twenty-seven students per class and the daily teaching load for teachers of required English courses in grades nine through twelve shall not exceed one hundred fifty students with a maximum of thirty students per class.

E. Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district.

F. Class load limits provided for in this section do not apply to band or music classes or athletic electives.

G. The state superintendent may waive the individual school class load requirements established in this section. Waivers shall be applied for annually and a waiver shall not be granted for more than two consecutive years. Waivers may only be granted if a school district demonstrates that:

- (1) no portable classrooms are available;
- (2) no other available sources of funding exist to meet its need for additional classrooms;
- (3) the school district is planning alternatives to increase building capacity for implementation within one year; and
- (4) the parents of all children affected by the waiver have been notified in writing:
 - (a) of the statutory class load requirements;
 - (b) that the school district has made a decision to deviate from these class load requirements; and
 - (c) of the school district plan to achieve compliance with the class load requirements.

H. If a waiver is granted pursuant to Subsection G of this section to an individual school, the average class load for elementary school teachers at that school shall not exceed twenty students in grade one and shall not exceed twenty-five students when averaged among grades two, three, four, five and six.

I. Each school district shall report to the department the size and composition of classes subsequent to the fortieth day and the December 1 count. Failure to meet class load requirements within two years shall be justification for the disapproval of the school district's budget by the state superintendent.

J. The department shall report to the legislative education study committee by November 30 of each year regarding each school district's ability to meet class load requirements imposed by law.

K. Notwithstanding the provisions of Subsection G of this section, the state board may waive the individual class load and teaching load requirements established in this section upon a demonstration of a viable alternative curricular plan and a finding by the state board that the plan is in the best interest of the school district and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. The department

shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee.

L. Teachers shall not be required to perform noninstructional duties except in emergency situations as defined by the state board. For purposes of this subsection, "noninstructional duties" means noon hall duty, noon ground duty and noon cafeteria duty.

History: 1978 Comp., § 22-2-8.2, enacted by Laws 1986, ch. 33, § 3; 1987, ch. 320, § 1; 1988, ch. 105, § 1; 1990 (1st S.S.), ch. 3, § 1; 1991, ch. 85, § 1; 1992, ch. 86, § 1; 1993, ch. 226, § 5; 1993, ch. 228, § 1; 1994, ch. 109, § 1; recompiled and amended as 1978 Comp., § 22-10A-20 by Laws 2003, ch. 153, § 51.

Cross references. — As to student achievement, see 22-2C-1 NMSA 1978 et seq.

The 1988 amendment, effective May 18, 1988, substituted "instructional assistant" for "aide" in Subsections A, C(1), D(1), D(2), and D(4); substituted "twenty-two" for "twenty-three" in Subsection D(2); added present Subsection D(3) and redesignated former Subsection D(3) as present Subsection D(4); substituted "grades three through six" for "grades two through six" in Subsection 4; added present Subsection H and redesignated former Subsection H as present Subsection I; and inserted "and the 1988-89 school year" in present Subsection I.

The 1990 (1st S.S.) amendment, effective July 1, 1990, in Subsection C, updated the school year dates, made changes in the grade level references, and added Paragraphs (5) to (7); rewrote Subsection D; in Subsection F, substituted "with a membership of four hundred or less" for "with an ADM of four hundred or less"; in Subsection G, deleted "for a period not to exceed two years" following "in Subsection A of this section" near the beginning; substituted present Subsection H for the former subsection which read "The state superintendent may waive the individual class load requirements established in Subsection B of this section for a period not to exceed two years upon a demonstration of necessary alternative curricular planning or a temporary shortage of classroom facilities"; and, in Subsection I, substituted "for the 1990-91 school year" for "for the 1987-88 school year and the 1988-89 school year" in the last sentence.

The 1991 amendment, effective June 14, 1991, in Subsection C, deleted "and instructional assistant entitlement" following "class load" in Paragraph (2), added present Paragraph (3), redesignated former Paragraphs (3) to (7) as Paragraphs (4) to (8) and substituted "1993-94" for "1992-93" in Paragraph (4), "1994-95" for "1993-94" in Paragraph (5), "1995-96" for "1994-95" in Paragraph (6), "1996-97" for "1995-96" in Paragraph (7), and "1997-98" for "1996-97" in Paragraph (8); substituted "1992-93" for "1991-92" in Paragraph (2) of Subsection D; and substituted "1991-92" for "1990-91" in Subsection I.

The 1992 amendment, effective May 20, 1992, substituted "four hundred" for "400" in Subsection F and "1993-94 school year" for "1992-93 school year" several times throughout the section.

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 226, § 5, approved April 6, 1993 and effective July 1, 1993, and Laws 1993, ch. 228, § 1, approved April 7, 1993 and effective June 18, 1993, which deleted "and grade one" following "kindergarten" in two places and "twenty-two students for grade two; twenty-four students for grade three; and twenty-five students

for grades four through six" in Subsection A; added the provisions of current Subsections B, C, E and G to I; deleted former Subsections C to F, pertaining to the dates for phasing in the provisions of Subsection A, the effective date of the provisions of former Subsection B and the authority of the state superintendent to waive class load requirements in certain cases; redesignated former Subsections B, G, H and I as Subsections E, F, J and K; rewrote Subsection F; added "Notwithstanding the provisions of Subsection F of this section" at the beginning of Subsection J; substituted "1993-94" for "1992-93" in the third sentence of Subsection K; and made minor stylistic changes. The section is set out above as amended by Laws 1993, ch. 228, § 1. See 12-1-8 NMSA 1978.

The 1994 amendment, effective May 18, 1994, substituted the last sentence in Subsection K for the former last two sentences, which read: "For purposes of this subsection, 'noninstructional duties' means noon hall duty, cafeteria duty, ground duty and bus duty. It is the intent of the legislature to maintain the provision of this subsection; provided, however, that for the 1993-94 school year, 'noninstructional duties' shall mean only noon hall duty, noon ground duty and noon cafeteria duty"; and made minor stylistic changes throughout the section.

The 2003 amendment, recompiled former 22-2-8.2 NMSA 1978 as present 22-10A-20 NMSA 1978, effective April 4, 2003, and substituted "educational" for "instructional" following "assistance of an" near the end of Subsection A; substituted "educational" for "instructional" following "assistance of an" near the end of Subsection B; deleted "Effective with the 1994-1995 school year" at the beginning of Subsection C; inserted present Subsection F and redesignated the subsequent paragraphs accordingly; substituted "G" for "F" following "Subsection" near the beginning of present Subsection H; deleted "of education" following "department" near the middle of present Subsection I; deleted "of education" following "department" near the beginning of present Subsection J; in present Subsection K substituted "G" for "F" following "Subsection" near the beginning and deleted "of education" following "department" near the end; and substituted "Teachers" for "Effective with the 1987-88 school year, certified school instructors" at the beginning of present Subsection L.

Amendments to section made in General Appropriations Act were not proper. — Amendments to this section made in the General Appropriations Act of 1989 were not proper, where the 1989 appropriations measure changed the effective dates for various actions under the statute and enlarged the authority of the state superintendent to waive class load requirements. The amendments constituted general legislation which, though necessary or desirable, could not constitutionally be included in an appropriations bill. 1989 Op. Att'y Gen. No. 89-26.

Compiler's notes. — This section was compiled as Section 22-2-8.2 NMSA 1978 at the time of the enactment of Laws 2003, Chapter 143, Section 2.

22-8B-4.1

PUBLIC SCHOOLS

22-8B-5

~~History: Laws 1999, ch. 281, § 4; 2000, ch. 82, § 3; 2001, ch. 348, § 1; 2003, ch. 153, § 32.~~

~~The 2000 amendment, effective March 7, 2000, deleted former Subsection B, relating to enrollment procedures at start-up charter schools, and redesignated the remaining subsections accordingly.~~

~~The 2001 amendment, effective June 15, 2001, in Subsection F, substituted "shall" for "may" in the first sentence and added the second sentence.~~

~~The 2003 amendment, effective April 4, 2003,~~

~~deleted "local" preceding "school district" throughout the section; and in Subsection J substituted "Section" for "Sections 22-1-6 and" preceding "22-2-8" near the middle and inserted "and the Assessment and Accountability Act" at the end.~~

~~Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction, and application of statute of regulation governing charter schools, 78 A.L.R.5th 533.~~

22-8B-4.1. Charter schools' enrollment procedures.

A. Start-up schools and conversion schools are subject to the following enrollment procedures:

(1) a start-up school may either enroll students on a first-come, first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available at the start-up school; and

(2) a conversion school shall give enrollment preference to students who are enrolled in the public school at the time it is converted into a charter school and to siblings of students admitted to or attending the charter school. The conversion school may either enroll all other students on a first-come, first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available at the conversion school.

B. In subsequent years of its operation, a charter school shall give enrollment preference to:

(1) students who have been admitted to the charter school through an appropriate admission process and remain in attendance through subsequent grades; and

(2) siblings of students already admitted to or attending the same charter school.

~~History: 1978 Comp., § 22-8B-4.1, enacted by Laws 2000, ch. 82, § 3.~~

22-8B-5. Charter schools; local school board authority; state board authority.

A. The local school board may waive only locally imposed school district requirements.

B. The state board shall waive requirements relating to individual class load and teaching load, length of the school day, staffing patterns, subject areas and the purchase of instructional material. The state board may waive state board requirements or rules and provisions of the Public School Code [Chapter 22 NMSA 1978] pertaining to graduation requirements, evaluation standards for school personnel, school principal duties and driver education. Any waivers granted pursuant to this section shall be for the term of the charter granted.

C. A charter school shall be a public school, accredited by the state board and shall be accountable to the school district's local school board for purposes of ensuring compliance with applicable laws, rules and charter provisions.

D. No local school board shall require any employee of the school district to be employed in a charter school.

E. No local school board shall require any student residing within the geographic boundary of its district to enroll in a charter school.

F. A student who is suspended or expelled from a charter school shall be deemed to be suspended or expelled from the school district in which the student resides.

History: Laws 1999, ch. 281, § 5.